

## Department of the Navy, DoD

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as an item of special damages with the injured person's claim or suit.

(ii) An agreement that the Government's claim will be made a party of the injured person's action should be in writing and state that counsel fees will not be paid by the Government or computed on the basis of the Government's portion of recovery.

(3) If the injured person is not bringing an action for damages or is refusing to include the Federal Government's MCRA interest, the JAG designee will pursue independent collection. The United States is specifically allowed to intervene or join in any action at law brought by or through the injured person against the liable third person or bring an original suit in its own name or in the name of the injured person. The JAG designee will ensure all parties are aware that the United States must be a party to all subsequent collection negotiation.

(4) When the MCRA interests are not being represented by the injured person and independent collection efforts have failed, the JAG designee will request JAG to refer the claim to the DOJ for possible suit. In such cases, the JAG designee will forward the complete file to JAG in accordance with §§ 757.18 (b) and (c).

(g) *Access to DON records and information.* (1) The medical records of the injured person will be released to the injured person or his legal representative upon request. This release will be without cost except in unusual circumstances. These records may not be released to anyone else outside the DON except in accordance with the provisions of the Privacy Act, 5 U.S.C. 552a. Usually such a release will require authorization from the injured individual or legal representative or an order from a court of competent jurisdiction. A clerk or attorney signed subpoena is not "an order from a court of competent jurisdiction."

(2) In appropriate cases, military health care providers who have examined or treated the injured person may be made available by their commands to testify regarding the medical care provided to the injured person. Requests for such testimony will be processed in accordance with DOD Directive 5405.2, 28 CFR part 725, and 32 CFR

part 725, except when the injured party is asserting the Federal Government's MCRA claim as part of his action for damages. In that situation, the injured person or legal representative is considered also to be a representative of the United States and the foregoing regulations are not applicable. In such a case, the JAG designee may, if appropriate, request the command of an involved military health care provider to make the provider available for testimony on behalf of the injured person.

### § 757.19 Waiver and compromise.

(a) *General.* A JAG designee may authorize waiver or compromise of any MCRA claim under his authority which does not exceed \$40,000.00. A third party's liability for medical costs to the United States arising from a particular incident will be considered as a single claim in determining whether the claim is more than \$40,000.00 for the purpose of waiver and compromise. When the JAG designee considers waiver or compromise appropriate in a claim which exceeds \$40,000.00, the claim file will be forwarded to JAG in accordance with §§ 757.18 (b) and (c).

(b) *Waiver.* The JAG designee may waive the Federal Government's MCRA interest when a responsible third-party tortfeasor cannot be located, is judgment proof, or has refused to pay and litigation is not feasible. Waiver is also appropriate when, upon written request by the injured person or legal representative, it is determined that collection would cause undue hardship to the injured person. In assessing undue hardship, the following circumstances of the injured person should be considered:

- (1) Permanent disability or disfigurement;
- (2) Lost earning capacity;
- (3) Out-of-pocket expenses;
- (4) Financial status;
- (5) Disability, pension and similar benefits available;
- (6) Amount of settlement or award from third-party tortfeasor; and
- (7) Any other factors which objectively indicate fairness requires waiver.

(c) *Compromise.* The JAG designee may, upon written request of the injured person or legal representative,

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compromise the Federal Government's MCRA interest using the criteria listed above.

### § 757.20 Receipt and release.

(a) *Payment.* The JAG designee may receive payment in part or in full for any claim for which he is responsible. Written acknowledgment of this re-

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ceipt will be mailed to the party making payment and a copy of the acknowledgement kept in the claim file.

(b) *Release.* The JAG designee will execute and deliver a release to third parties making full or compromised payment on the Federal Government's MCRA interest. A copy of the release will be kept in the claims file.

## SUBCHAPTER F—ISLANDS UNDER NAVY JURISDICTION

### PART 761—NAVAL DEFENSIVE SEA AREAS; NAVAL AIRSPACE RESERVATIONS, AREAS UNDER NAVY ADMINISTRATION, AND THE TRUST TERRITORY OF THE PACIFIC ISLANDS

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AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 5031, 6011, 18 U.S.C. 2152. The text of part 761 contains additional references, including Executive Orders.

SOURCE: 28 FR 13778, Dec. 18, 1963, unless otherwise noted.

#### Subpart A—Introduction

##### § 761.1 Scope.

(a) This part provides regulations governing the entry of persons, ships, and aircraft into:

(1) Naval Defensive Sea Areas and Naval Airspace Reservations established by Executive order of the President (see § 761.3(a)).

(2) Areas placed under the Secretary of the Navy for administrative purposes by Executive order of the President (see § 761.3(b)).

(3) The Trust Territory of the Pacific Islands (see § 761.3(c)).

(b) The entry authorizations issued under the authority of this part do not supersede or eliminate the need for visas or other clearances or permits required by other law or regulation.

[28 FR 13778, Dec. 18, 1963, as amended at 35 FR 10008, June 18, 1970]

##### § 761.2 Background and general policy.

(a) Certain areas, due to their strategic nature or for purposes of defense, have been subjected to restrictions regarding the free entry of persons, ships, and aircraft. Free entry into the areas listed and defined in this part, and military installations contiguous to or within the boundaries of defense areas, is subject to control as provided for by Executive order or other regulation. The object of controls over entry into naval defensive sea areas, naval airspace reservations, administrative areas, and the Trust Territory of the Pacific Islands, is to provide for the protection of military installations as well as other facilities, including the personnel, property, and equipment assigned to or located therein. Persons,